

MAINE STATE LEGISLATURE

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RICHARD S. COHEN
ATTORNEY GENERAL



80-125

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DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 11, 1980

Ms. Nancy McCallum
Special Assistant
Executive Department
State House
Augusta, Maine 04333

Dear Ms. McCallum:

This will respond to your oral request for an opinion in which you inquire whether the provisions of 21 M.R.S.A. §442 (1965-1979 Supp.) apply to the situation described below.

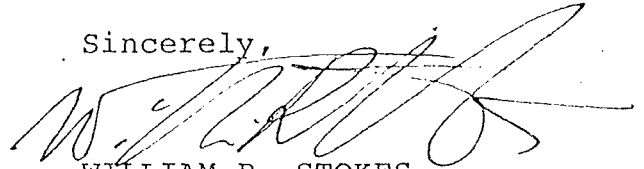
You have informed us of the following facts. Prior to his death in June, 1980 Mr. Joel LeBlanc was a county commissioner for Aroostook County whose term of office will expire at midnight on December 31, 1980. It is our understanding that Mr. LeBlanc did not intend to run for re-election and, consequently, did not seek his party's, i.e., the Democratic, nomination at the primary election held on June 10, 1980. Mr. Keith Lambert became the Democratic party nominee for Mr. LeBlanc's seat as county commissioner at the June primary. Governor Brennan has indicated that he wishes to appoint Mr. Lambert, pursuant to 30 M.R.S.A. §103, to complete the remainder of Mr. LeBlanc's unexpired term as Aroostook County Commissioner. However, a question has arisen as to whether Mr. Lambert can accept this gubernatorial appointment without jeopardizing his nomination to run for a full four-year term as county commissioner.

21 M.R.S.A. §442 (1965-1979 Supp.) provides that "[w]hen a person already nominated for any federal, state or county office accepts nomination to fill a vacancy, the first nomination is thereby vacated." In our view, this statutory provision does not apply to the situation described above. It seems apparent to us that Mr. LeBlanc's death created a vacancy in an office, not in a nomination. Consequently, in the event that Mr. Lambert is offered, and accepts, a gubernatorial appointment to complete Mr. LeBlanc's unexpired term as county commissioner, he would not be accepting a "nomination to fill a vacancy." Rather, he would be accepting an appointment to fill a vacancy in an office. Accordingly, it is our conclusion that Mr. Lambert's nomination as the Democratic candidate for Aroostook County Commissioner, which he obtained at the primary election in June, 1980, would not be vacated by his acceptance of a gubernatorial appointment

to complete the deceased incumbent's unexpired term of office.

I hope this information is helpful to you. Please feel free to call upon us if this office can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read 'W. R. Stokes', with a large, sweeping flourish extending to the right.

WILLIAM R. STOKES
Assistant Attorney General

WRS:sm